

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 88 of 1977

with

FIRST APPEALS No. 114 and 115 of 1977

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MUNICIPAL CORPORATION OF CITY AHMEDABAD

Versus

KHURSHID HUSEIN ISMAILJI

Appearance:

1. First Appeal No. 88 of 1977
MR MK PUROHIT for MR GN Desai for Petitioner
MR BR SHAH for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2
2. First Appeal No 114 of 1977
Mr MK PUROHIT for MR GN DESAI for petitioner
MR BR SHAH for Respondent No. 1
Mr.AC GANDHI, for Respondent No. 2
3. First Appeal No. 115 of 1977
Mr.MK PUROHIT for MR GN DESAI for the petitioner
MR BR SHAH for Respondents

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/09/97

ORAL COMMON JUDGEMENT

All the three Appeals arise from the Judgment and

Decree dated 19th February 1976 rendered by the learned Judge of the City Civil Court, Court No.8, Ahmedabad in Civil Suits No.3012 of 1972, 2188 of 1972 and 1009 of 1972 declaring that the impugned notice given by the appellant Corporation is violative of principles of natural justice and, therefore, is illegal and granting relief of permanent injunction restraining the Appellant Corporation from implementing or otherwise executing the same.

2. It appears that the concerned respondents filed respective Suits challenging the notices issued by the appellant - Ahmedabad Municipal Corporation to them under Section 54 of the Bombay Town Planning Act (27 of 1955) read with Rule 27 of the Bombay Town Planning Rules (1955) directly calling upon the respective respondents to vacate the land in question failing which action of taking possession and lodging the appropriate complaint would follow. The appellant Corporation resisted the Suit inter-alia on the ground that no notice is required to be served under the aforesaid provisions of law and there is no violation of principles of natural justice in calling upon the respective respondents to vacate the land in question (property in question).

3. The learned trial Judge relying upon a decision of this Court in the case of Mangaljibhai Rupjibhai & ors. V/s. The State of Gujarat & ors., reported in XIII G.L.R. 649 held that prior show cause notice was atleast necessary before taking any action as contemplated by the aforesaid provisions of law. He, therefore, on a preliminary issue, on the admitted fact that no such prior notice was issued, decreed the Suits of the concerned respondents with no order as to costs.

4. Ahmedabad Municipal Corporation being the affected defendant in the respective Suits has carried the matter in First Appeals before this Court under Section 96 of the Code of Civil Procedure.

5. Having heard the learned Advocates for the parties I am of the opinion that the matter is now no longer res-integra and the question with regard to requirement of observation of natural justice stood settled firstly by a decision of the Apex Court in the case of M/s. Babubhai & Co. V/s. State of Gujarat & ors., reported in AIR 1985 SC 613, where in Para : 8 of the citation following observations have been made :

"8. In the instant case on an examination of the Scheme of the Act as also the purpose sought to be achieved by S.54 it will appear clear that

the topic of making of town planning schemes is dealt with in Ss.21 to 53 while S.54 (and some of the following sections like 55 and 71 to 78) deal with the aspect of the execution of town planning schemes and it is at the stage of execution of a town planning scheme that the power of summary eviction of occupants who have ceased to be entitled to occupy the plots in their occupation has been conferred upon the Local Authority itself - a highly responsible body, and that the power is required to be exercised by it in objective manner (it is to be found by reference to the Final Scheme and its interpretation whether the occupants are occupying lands which they are not entitled to occupy). Further we are in agreement with the High Court that the power conferred upon the Local Authority is a quasi-judicial power which implies that the same has to be exercised after observing the principles of natural justice, that is to say, the decision that the occupants are not entitled to occupy the plots in their occupation has to be arrived at after hearing such occupants and that too by passing a speaking order which implies giving of reasons and that ensures the application of mind to only germane or relevant material on the record eschewing matter extraneous and irrelevant. Moreover any order of summary eviction based on any extraneous non-germane, irrelevant or mala fide considerations would be subject to writ jurisdiction of Court. Having regard to these aspects, mere absence of corrective machinery by way of appeal or review would not in our view render the provision invalid."

6. Very recently the Honourable Supreme Court had an occasion to consider the provision of Section 54 and Rule 27 of the Bombay Town Planning Act and the Rules and making a reference to the case of M/s.Baburam & Co. (supra) it held that the power conferred upon the Local Authority under Section 54 of the Bombay Town Planning Act is a quasi-judicial power which implies that the same has to be exercised after observing the principles of natural justice.

7. I have gone through the notice which came to be impugned in the respective suits and I find that the Suit notice has been issued directly asking for possession of the land/property in question in the respective Suits. That is precisely the observation of the learned Judge

upon reading of the respective Suit notice. Nothing contrary has been shown before this Court from the said notices. The result is that these Appeals shall have to be dismissed.

8. Following order is, therefore, passed :

All the three Appeals are hereby dismissed with no order as to costs.

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